

Restorative Justice Practices of Native American, First Nation and Other Indigenous People of North America: Part Two

BY LAURA MIRSKY

This is part two in a series of articles about restorative justice practices of Native American, First Nation and other indigenous people of North America. The series is not intended be all-inclusive, but rather a broad thematic overview. This article includes interviews with Louise Thompson, of the Mohawk Nation of Akwesasne, and Leanne Douglas, Christine Douglas and Stephanie Sandy of the Mnjikaning First Nation. Part one of the series can be read at <http://www.restorativepractices.org/library/natjust1.html>. A related eForum article, "The Wet'suwet'en Unlocking Aboriginal Justice Program: Restorative Practices in British Columbia, Canada," can be read at: <http://www.restorativepractices.org/library/wuaj.html>.

In First Nation and Native American justice, healing, along with reintegrating individuals into their community, is paramount. Native justice involves bringing together victims, offenders and their supporters to resolve a problem. This parallels the philosophy and practice of the restorative justice movement. In the Native worldview there is a deep connection between justice and spirituality; harmony and balance are essential to both.

The Mohawk Nation of Akwesasne Justice Department has developed a comprehensive community justice program, including the Council of *Neh-Kanikonriio* (the Good Mind), based on traditional principles and culture. (The website of the Mohawk Nation of Akwesasne Justice Department is: <http://www.akwesasne.ca/justice.htm>.) Akwesasne territory spans the borders of the United States and Canada, the state of New York and the



Louise Thompson
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provinces of Ontario and Quebec. All of these jurisdictions claim control of the

Akwesasne, which causes conflict, said Louise Thompson, justice coordinator for the Mohawk Council of Akwesasne, who is responsible for the administration of the Akwesasne Legislative Development Program.

"When people get involved with the justice system, there are so many systems that apply here," said Thompson. "When people get into a conflict, sometimes they don't adhere to the laws, because they say, 'Those laws don't apply to me.' We were here before the invasion of the white or other cultures."

Thompson talked about the Two-Row Wampum Belt (*Kahswenhtha*), which represents the Mohawk (*Kanien'kehake*) treaty with non-Aboriginal peoples. "We get our support from that when we create our laws," she said. The belt has a white background with two parallel purple strips running through it. One strip represents First Nation people; the other represents non-First Nation people. Said Thompson, "It's recognized that these two people are two different cultures with different values and principles, and that the lines will always be parallel but will never meet. That allows us to carry our own values and principles in our own row and recognize that they have their own laws and values and principles on their side. If you come

into our territory, our laws apply to you, and vice versa. Just like if somebody from the U.S. went to France.”

Because of the Two-Row Wampum, the Justice Department of Canada recognizes rights of Native people to create their own laws, said Thompson. The Justice Department of Canada developed the Aboriginal Justice Department, which provided \$72 million to help the First Nations create their own justice systems. “Now a lot of people are developing their own justice programs and the government is actually saving money. The federal penitentiaries were crowded with Native people. Ten years ago it cost \$46,000 a year to keep one inmate in jail. But when we rehabilitated them it cost nothing, so they gave us money.” The same premise applies to probation, said Thompson. “They said, Who would be better to supervise these people than the people themselves? That’s where we got the money to operate our own probation, parole and police departments.”

“The Indian Act was forced upon us in 1898 in Canada, and it had all these rules and policies on how to conduct yourself. But we don’t force things on people. Our custom is to ask the people what they want to do—to come to a community collective agreement.” Accordingly, in 1991, the Akwesasne Justice Department performed an assessment for the community, asking justice-related questions: “Who should be addressing crimes? Do you think that the outside courts should be doing this or should we be doing it internally?” The results of the survey were used by the department to develop an administration to address problems themselves, including their own laws, their own mechanism to resolve conflicts, and their own enforcement and rehabilitative processes.

In 1994, the department organized the Council of *Neh-Kanikonriio*. It was decided that whenever there was an

issue, a conflict or a dispute it should go to this council, “the ones who sit with the people and come up with solutions of how to make things right and restore the balance and harmony within the community,” said Thompson. About 30 men and women sit on the council—respectable citizens of the community—elders, middle-aged people and a few young

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people. A training seminar teaches council members the elements necessary to conduct a hearing.

A panel of three or four council members reviews each case. The panel, the victim and offender involved in the incident, and the resource staff—drug and alcohol counselors, child and family service workers or mental health workers, depending on the circumstances—meet for a hearing and come up with an agreement. The council asks people who come to them who else they would like to attend the hearing. “Sometimes people ask to attend, and we ask the victims’ and offenders’ permission,” said Thompson. This system has been in use since 1995, aided by United States federal and Ontario provincial government funding.

The first thing offenders must do in a hearing is “give respect to Mother Earth,” said Thompson. Often people involved in criminal activity have totally neglected that responsibility, she said. “We bring these people back down to reality and back down to earth, make them realize

that life is so much more meaningful than having money to buy cars and clothes. You have to believe that there’s somebody spiritual over you.”

The next step in a hearing is to acknowledge why the person has been brought before the panel, in a respectful way, welcoming that person to the occasion. Then everyone tells the circumstances of what happened, and each person is asked to recommend the best way to restore the balance and harmony in the situation. A facilitator—a paid justice-program staff member who coordinates the hearing and organizes the circle—takes notes; panel members prepare the document of an agreement and everybody signs it.

The process used in the council is derived from traditional methods, said Thompson. “Back in the 1950s, we had one person sitting there as justice of the peace, and she still brought in the practices of the culture, but the manner was still very mirrored to the European. It wasn’t until the 1990s when we decided that we didn’t have to practice what they practice, because we are our own people. That’s the time we put our foot down and said, ‘No, we are going to adopt our traditional ways—getting everyone together.’” Continued Thompson, “I’m of the Wolf Clan, and if I did something that would violate the principle of the Great Law [the *Kaianerekowa*], my clan would come to me and tell me to get back on the right path. It’s those principles that we modified to use within the *Neh-Kanikonriio* Council.”

Thompson talked about facilitating a hearing for “a hard-core person in leather jeans and jacket, didn’t give respect for anybody, had a lengthy record. He was advised by his lawyer to give this a try. [His charge was] assault with a weapon. We thought, How are we ever going to get through to this guy? We brought him in, treated him with respect,

told him where his seat was. I asked him to read the opening address. He said, 'I have trouble reading.' I said, 'I'll sit beside you and help you.' So he read it and before he even got done he turned to his victim and said, 'I'm so sorry for what I did to you,' and started crying. My job was halfway done. Sometimes there is such a powerful aura around it that people go in there nervous, but when they get out of there they're so at peace."

Another hearing involved a non-Native girl who was assaulted by two Native girls, which was attended by the victim and her parents. "They were amazed at the process," said Thompson. "They really wanted to express their gratitude that they were allowed to come and have this discussion, because so many things were revealed that would never have been revealed in the Canadian court system. Once the session was done, the offenders and the victims got up and gave each other a hug and said, 'OK we have mended our differences.'"

This process could be translated to anyone, said Thompson. "I think the court system should have these opportunities, instead of just having an impact statement made. What kind of feelings do you have from a letter? People are more free to express themselves verbally than in writing."

Referrals to the council come from the police department or from community members themselves. Individuals who believe that their situation can be resolved without court involvement can contact police and say that they don't want charges laid. If it's acceptable to the victim, the police will agree that the person can go before the council instead, as long as he or she agrees to cooperate with the council. A judge may refer a case to the council after someone has pleaded not guilty but been found guilty. A judge may also require an individual who has been sentenced to probation to meet

with the council. "At this stage it's more for healing and restoring balance," said Thompson. A judge may refer a case back to the council for sentencing or may seek recommendations from the council, in accordance with the Gladue decision—a 1999 Supreme Court of Canada judgment mandating that sentencing judges consider all available sanctions other than

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imprisonment, paying particular attention to the circumstances of Aboriginal offenders.

An average of one case a week comes to the *Neh-Kanikonriio* Council. Asked what percentage of the community's criminal cases are handled by the council, Thompson said that all of them *could* be. "It all depends on the victim—we don't want to force them to come to this forum." In a pre-charge situation, the council won't handle cases without a victim present. If the judge has ordered a case to the council in a post-charge matter, they will handle it without the victim present, but they encourage the victim to be there.

Quite a number and diversity of cases are referred to the council, involving both youth and adults, said Thompson, including "shoplifting, dangerous driving, assault, assault with a weapon, everything except murder—we don't murder people."

A hearing was held in a vehicular homicide case involving drunk driving. "The offender wanted to restore harmony and peace in the community," said Thomp-

son, adding, "There's no mechanism in the courts to restore balance." Before the hearing, the family and friends of the person who was killed were always trying to avoid the offender. At the hearing, they had the chance to sit down and confront him. "That was one of the most favorable impacts," said Thompson. "After they sat down and talked and he apologized, their whole environment changed."

Asked if there is a problem with sexual abuse in the community, Thompson said, "If there is, it's because somebody wanted to conduct a survey to find out if it exists." Only one such case has come before the council, she said. She attributes the introduction of this type of behavior to residential schools. (Residential schools were administered by Christian churches and the government of Canada to assimilate First Nations people. Over 100,000 Native children attended these schools, beginning in the mid-19th century. The last one was closed in the mid-1980s.)

"My mother was sent to a residential school when she was three years old," said Thompson. "She's passed away now and I didn't get a chance to get all the information from her. But hearing the stories from other people—a lot of them had both parents still alive, but the Indian agent went around and said, 'Maybe these people can't handle all these children; I'm going to take one or two of them away and put them into this residential school.' Maybe the parents were abusing alcohol, or maybe the Indian agent just thought, 'I think this child needs a better environment. I'm going to take them and put them all on a train and send them to this place.' Maybe some parents voluntarily let their child go because the Indian agent told them, 'This kid's going to get an education; he's going to come back and live in a better world than you are, or get a job and help support you.'

"The one where my mother was sent was in Spanish Ontario, and when they

reached there, my mother being one of the younger children, they cried and cried because they didn't know what they were being sent there for and why, and the nuns and priests that were running this place said, 'Oh, be quiet. You were sent here and you're going to stay here. Your parents don't want you no more. Your parents are dead. Your parents are nothing but drunks, and you don't want to be Native people like them—dumb, stupid and drunk. You're going to stay here with us and get an education.'

"The majority of the time you were in a slave camp. You had to grow crops, tend to animals, run an industrial produce center, and maybe once a week they gave them lessons in school. People died there without proper medical attention; people were raped and sexually abused, and they were punished for speaking their language. People tried to run away and got caught and were punished or died from exposure.

"Some of the survivors have blocked out these traumatic events. And when they blocked it out, they also blocked out their culture and their language." Victims of the schools come to ask her for help, said Thompson. "A gentleman 70 years old told me that he was sexually abused in residential school when he was seven. I've had three or four people come to me like that. With one of these individuals—I tracked his record—he was convicted of a sexual abuse offense himself. He learned it."

The Akwesasne have many rehabilitative services, including the Men's Wellness Program, which includes culturally-based men's wellness camps. "For a long time we only had programs that dealt with assistance to women and their needs," said Thompson. "We recently found that we were neglecting our men. They need counseling on how to be better husbands and fathers, or mental health counseling. Sometimes they need protec-

tion from their wives in physical abuse." Akwesasne health and social-service facilities address the community's physical, emotional and social needs and provide welfare and drug-and-alcohol services for both adults and youth, including a residence for youth who are having problems at home. Concluded Thompson, "You seldom need to go off our territory for services."

Another First Nation community, the Mnjikaning, located in Ontario, has developed a community healing model and restorative justice program. *Biidaaban* (Ojibwe or Anishinaabe for "new beginning" or "new day") works with individuals who have committed wrongdoing or been hurt by wrongdoing. *Biidaaban* coordinator Leanne Douglas said that they try to avoid the terms "offender" and "victim" so as not to label people, but rather address their behavior. "*Bii* means the future, *daa* means the present and *ban* means the past. We're incorporating all of that: looking at the past, living in the present and looking towards the future," said Douglas.

The goal of *Biidaaban* is for people who have harmed to take responsibility for the harm they have caused, be accountable to the community and to people they have hurt, publicly apologize and make amends and restitution. Working with people who have been harmed involves trying to help them through the process, validating their experience and having them be a part of the process of coming together with the person who has caused the harm. "We work with



Mnjikaning First Nation Social Services Staff
Back Row, left to right: Stephanie Sandy,
Lorraine McRae, Leanne Douglas, Byron Stiles
Front Row: Christine Douglas and Susan Lahay

their families and ultimately the whole community," said Douglas.

Biidaaban serves both adults and youth. Other Mnjikaning social services programs, all of which work closely with *Biidaaban*, include addictions and welfare programs and a child welfare program that works with the Children's Aid Society in the town of Orillia.

The principal problems in the community are addiction and domestic violence stemming from addiction, said Douglas. *Biidaaban* handles cases concerning such matters as assault, domestic violence, breaking and entering, sexual abuse, armed robbery and impaired driving, most of which involve the court system.

"We look at alternative sentencing, such as stays of charges, diversions, conditional discharges, reduced sentencing or mitigation if they've done really well in the program but it's been a very serious crime," said Douglas. "We may meet a person in court and tell them about our program; we may have referral by police, by family members, by the individual themselves.

"In the work with the court system we've developed an informal protocol, although we're working on a formal one, where we ask for an adjournment of four months, and we present an interim treatment plan at that time. It's a time for us to assess whether the person is actually committed to a healing process and for the person to see if this is the path they want to take. The interim treatment plan involves assessment, therapy and counseling and is unique to each person."

The healing process consists of team counseling with the individuals that are involved—those that have harmed and been harmed—in preparation for a circle that includes family and the wider community. Individuals invite their supporters to the circle, but anyone in the community who wants to participate can attend. "We send a flier to every home in the community," said Christine Douglas, clinical manager for Mnjikaning Community and Family Services, of which *Biidaaban* is a component. (Christine and Leanne Douglas are not related; their husbands are distant cousins.) Attendance at circles is generally 20 to 25 people.

At the community gathering, everyone introduces themselves and says why they're there. Next, the people who committed the wrong talk about what they did and take responsibility for it. Then everyone has a chance to talk about what the impact of the wrongdoing has been on them. The person then apologizes and everyone talks about what needs to be done to make things right and to restore harmony and balance. A community healing plan is developed and a contract is signed by the person who has harmed and the *Biidaaban* team. The gathering ends with a ceremony. Regular meetings between the *Biidaaban* team and those who were involved monitor whether the contract is being fulfilled. A ceremonial celebration follows successful completion of the *Biidaaban* process.

Out of over 80 people who have participated in the process, only four have reoffended and only one has committed the same crime: an assault. The other three were recharged with breaches of probation due to drinking. "It's a lot better than what the justice system's sta-

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tistics are," said Leanne Douglas. "When you go to the court system, people in the community really don't know what's going on there. But when it's public and in the community then everybody knows and it can act like a community watch program. So people know that people are watching them and that they need to behave properly." Said Christine Douglas, "Our probation officer said that when she first started to come here, close to the beginning of this program, she had 26 probationers. Today she has six."

The court system has received the program very well. "We've developed a wonderful working relationship over the last several years," said Leanne Douglas. "It was very difficult at first. It took a lot of education and discussions about what we were doing, and probably in the beginning they were very reluctant, but I think we've proven our credibility to them. We've had cases where people haven't done very well and we've turned them back to the court system. I think doing that has boosted our credibility,

because they know that we're not going to say that people are doing well if they're really not. But we always have to do ongoing education, because every year a new Crown Attorney [government prosecutor] is appointed."

It took several years to develop the *Biidaaban* model, said Stephanie Sandy, Mnjikaning First Nation social services worker. First, a core group of community members researched their people's history, then received restorative justice training from Dr. Ed Connors, a psychologist of Mohawk and Irish descent. They also visited Hollow Water, Manitoba, Canada, which had successfully used healing circles to cope with a legacy of child sexual abuse and alcohol addiction. The Mnjikaning decided to base *Biidaaban* on Hollow Water's healing model. (To read about the Hollow Water Community Holistic Circle Healing Project, in a paper by one of its initiators, Berma Bushie, please go to: http://www.iirp.org/library/vt/vt_bushie.html.)

The core of the *Biidaaban* model is the same as Hollow Water's, said Christine Douglas, but they adapted it. Hollow Water is a small, isolated community in northern Manitoba, while Mnjikaning, she said, is "very much part of southern Ontario, which is a very populated area."

Since 1996, Mnjikaning has been the site of Casino Rama, one of the biggest casinos in Canada, and the largest employer of Native people in the country in a single venue. With 12,000 people frequenting it daily, the casino has completely transformed the community.

"Our unemployment rate before the casino was 65 percent and that was after a lot of hard work to get it down to 65 percent. Now it's about 10 percent," said Christine Douglas. A land lease and direct payments from the casino provide for infrastructure such as water and waste water treatment and police and fire fighting

services. On the other hand, gambling has definitely become a problem. The casino provides funds for a gambling addiction program within the community.

Gambling addiction gave rise to a sentencing circle attended by over 75 community members. Two Mnjikaning community employees were charged with the theft of over \$100,000 of the community's money, stolen due to gambling addiction. Leanne Douglas said she felt it was an ideal case for the community to resolve, instead of an outside system, "because the community was the victim; it was their money." It took a lot of work and negotiation, she said. "We had excellent lawyers who helped us in this process of actually having it come into our community, and we had a judge who was Native, so she came here with the court clerks; it was all set up and recorded. We had the Crown Attorney and their lawyers."

Community members were glad to have input into the process and felt that healing resulted. As for the people who had committed the theft, said Douglas, "It was very difficult for them. I think they were frightened about facing the community, but they did have their family support there. They took responsibility for what they did and apologized, but definitely it was a frightening experience—a lot more frightening than standing in court and not having to say anything."

The judge took recommendations from the community to determine the sentence, which did not include jail time. "But it was actually probably a tougher sentence than what they would have gotten in a court system," said Douglas. "They're required to pay back all of the money, which is probably a life sentence in itself. They were under house arrest and had three years of probation and community service hours." They also received psychotherapy and attended a problem-gambling program.



The Ojibwe medicine wheel, as depicted in the brochure for *Biidaaban*, the Mnjikaning Community Healing Model

Christine Douglas recalled a community healing circle, held for a 10-year-old boy who had fired a pellet gun and hit the back window of a taxi going past his house. The driver called the police and they found the child. It was suggested that he attend a community gathering. The cab driver wasn't able to attend, but the taxi's owner came. Said Douglas, "He talked about how terrified the taxi driver had been when it had happened because he thought that he was going to be killed; he didn't know it was just a pellet gun. He talked about the fact that now the cab driver might be afraid to come to the community. And this child's mother relied on cabs because she had no car. So he was really able to see the impact of his behavior. His family was there, and we also were able to talk about all of the good things that this child is doing. It worked really well even though the child was only 10 years old. And nothing would've happened otherwise, because he was too young to charge."

Asked if they felt that the *Biidaaban* process derives from traditional Aboriginal justice practice, Leanne Douglas said she thought it did, "because people took

responsibility for their behavior and it was the community that tried to set them on the right path. If somebody was acting out and not behaving properly, it meant that they were out of balance and that they needed to be brought back into balance. When we talk about balance and harmony within the community I think it comes from that." Added Christine Douglas, "It's a consensus model and I think that's very much an Ojibwe model."

About the tie between justice and spirituality, Leanne Douglas said, "We incorporate spirituality in everything we do—in our gatherings, in the work with individuals. It's a part of our teachings—using the medicine wheel [a Native symbol used in healing and other ceremonies] to help the people we work with understand about their whole self. We look at their spirit, their heart, the mind and the body, trying to keep that in balance and having them understand that they need to work in those four areas."

All healing circles open with a spiritual observance. "If you're a traditional person we open with a smudge [a spiritual purification using smoke from a burning bundle of sage or other sacred herbs] and a prayer; if you're Catholic or Pentecostal or whatever it may be, we do an opening that's right for those people. There's no discrimination about beliefs," said Douglas.

Asked how the community has accepted *Biidaaban*, Christine Douglas said that people in trouble are interested in being part of the program, "because, at least initially, they see it as a 'Get Out of Jail Free' card [as in the board game *Monopoly*]. Then they come to realize that it actually might have been easier to go to jail."

Unfortunately, said Douglas, sometimes the community also sees the program as an easy way out, because they don't really know what it's about. Few people take part in the program unless

the situation involves someone close to them, she explained. She hopes that continuing to educate the community will change this. They would like to get more volunteers involved, especially in the gatherings.

Plans are in process to form a youth justice circle. "We're going to personally invite some people to be a part of that," said Douglas. "Hopefully when they see what we're doing in the youth justice circle they'll be able to understand better what we're doing with the adults." Added Leanne Douglas, "We're going to try to get a cross-section of our community to be a part of that, and they can talk to their family about it, and it can filter down a little bit." The ultimate goal of *Biidaaban*, she said is "to have a healthy, safe community, to repair relationships, help people be in balance and be healthy in faith and happy."

Many articles on First Nation and Native American justice can be found in the IIRP online library, including:

"Sentencing Circles for Aboriginal Offenders in Canada: Furthering the Idea of Aboriginal Justice Within a Western Justice Framework," by Melani Spiteri. http://www.iirp.org/library/mn02/mn02_spiteri.html.

"Restorative Practices Seen by the Court," by the Honorable Judge Jean-L. Dutil. http://www.iirp.org/library/t2000/t2000_jdutil.html.

"Circle Sentencing: Part of the Restorative Justice Continuum," by the Honorable Judge Heino Lilles. http://www.iirp.org/library/mn02/mn02_lilles.html.

"Aboriginal People and Justice Issues," by the Honorable Judge Murray Sinclair. http://www.iirp.org/library/t2000/t2000_msinclair.html.

The Restorative Practices eForum will feature other First Nation, Native American and indigenous justice practices in the future. ☉